

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
601 New Jersey Avenue, N.W., Suite 9500  
Washington, D.C. 20001

May 19, 2011

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION, (MSHA),	:	Docket No. WEVA 2007-600-A
Petitioner	:	A.C. No. 46-08791-120481-02
v.	:	
	:	
WOLF RUN MINING COMPANY,	:	Sago Mine
Respondent	:	

## DECISION APPROVING SETTLEMENT

Before: Judge Feldman

This matter concerns 104(d)(1) Order No. 7100904 that cites a violation of 30 C.F.R. § 75.370(a)(1) as a result of Wolf Run Mining Company's ("Wolf Run's") alleged unwarrantable failure<sup>1</sup> to comply with an addendum to its approved ventilation plan. The cited violation concerns the construction of ten Omega Block seals that were installed to seal an abandoned area in the 2<sup>nd</sup> Left Mains. The seals were destroyed as a consequence of the fatal explosion that occurred at the Sago Mine on January 2, 2006.

At the time of the explosion, 30 C.F.R. § 75.335 required seals to withstand an explosive force of at least 20 pounds per square inch ("psi"). The accident investigators determined that the seals in the Sago Mine were exposed to explosive forces in excess of 90 psi. Prior to this accident, Mine Safety and Health Administration ("MSHA") investigators had never encountered this level of explosive forces that had originated in abandoned areas behind seals.

Following this accident, MSHA conducted extensive seal strength tests with the participation of the National Institute for Occupational Safety and Health and the State of West Virginia. Omega Blocks that simulated the construction of the seals that were destroyed by the Sago Mine explosion, as well as seals constructed in accordance with the ventilation plan, were exposed to explosive forces. It was determined that both types of seals would likely have withstood explosive forces of 20 psi, although both would likely have failed to withstand the force of at least 90 psi created by the Sago explosion.

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<sup>1</sup> A violation of a mandatory safety standard is unwarrantable when the actions of the mine operator that resulted in the violation constitute more than ordinary negligence. *Emery Mining Corp.*, 9 FMSHRC 1997, 2001 (Dec. 1987).

Consequently, MSHA determined that Wolf Run's strict compliance with the seal installation requirements in the ventilation plan would not have prevented the fatal mine explosion. Therefore, the Secretary has agreed to withdraw the unwarrantable failure allegation, thus reducing the negligence attributable to Wolf Run from high to moderate, as the subject seals apparently satisfied the 20 psi strength requirements in effect at the time of the accident. Section 75.335 has since been modified to require seals constructed after October 20, 2008, to withstand forces of at least 50 psi, or 120 psi, depending on the type of atmospheric monitoring of the sealed areas.

The Secretary initially proposed a penalty of \$9,700.00 for 104(d)(1) Order No. 7100904. The Secretary now has filed a motion to approve settlement wherein Wolf Run has agreed to pay a reduced civil penalty of \$8,500.00. The settlement terms include modifying 104(d)(1) Order No. 7100904 to a 104(a) citation to reflect that the cited violation was not attributable to an unwarrantable failure.

I have considered the representations and documentation submitted in this matter and I conclude that the proffered settlement is appropriate under the criteria set forth in Section 110(i) of the Act. **WHEREFORE**, the motion to approve settlement **IS GRANTED**, and pursuant to the parties' agreement, Wolf Run Mining Company **IS ORDERED** to pay a civil penalty of \$8,500.00 within 30 days of this Order in satisfaction of 104(a) Citation No. 7100904.<sup>2</sup> Upon receipt of timely payment, the captioned civil penalty case **IS DISMISSED**.

Jerold Feldman  
Administrative Law Judge

Distribution: (Regular and Certified Mail)

Robert S. Wilson, Esq, Office of the Solicitor, U.S. Department of Labor, 1100 Wilson Blvd.,  
22<sup>nd</sup> Floor West, Arlington, VA 22209

R. Henry Moore, Esq, Jackson Kelly, PLLC, Three Gateway Center, 401 Liberty Avenue,  
Suite 1340, Pittsburgh, PA 15222

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<sup>2</sup> Payment should be sent to the Mine Safety and Health Administration, U.S. Department of Labor, Payment Office, P.O. Box 790390, St. Louis, MO 63179-0390. Please include the Docket No. and A.C. No. noted in the above caption on the check.